FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

SENORA ATAKULU **7270 Wood Hollow Terrace** **Fort Washington, MD 20744,**	
Plaintiff,	
v.	**Civil Action No.**
MARYLAND DEPARTMENT OF HUMAN RESOURCES **311 West Saratoga Street** **Baltimore, MD 21201**	JFM 14 CV 0904
and	
PRINCE GEORGE'S COUNTY DEPARTMENT OF SOCIAL SERVICES **805 Brightseat Road** **Landover, MD 20785**	
Defendants.	**JURY TRIAL DEMANDED**

VERIFIED COMPLAINT
(Disability & Age Discrimination and Retaliation)

Pursuant to Federal Rule of Civil Procedure Rules 3 and 41(b), Plaintiff Senora Atakulu, by her undersigned attorney, hereby files her complaint.

I. JURISDICTION AND VENUE

1. The Court has jurisdiction of this case under Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e-5(f); Title I of the Americans with Disabilities Act of 1991 (ADA), 42 U.S.C. §12117(a), see also 42 U.S.C. § 2000e-5(f); and the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. § 621 *et seq.*

II. THE PARTIES

2. Plaintiff Senora Atakulu (hereafter "Plaintiff") is a resident of Maryland and a former employee of Defendant Prince George's County Department of Social Services ("Department of Social Services" or "the employer").

3. Defendant Maryland Department of Human Resources is a person within the meaning of 42 U.S.C. § 2000e(a) and an employer within the meaning of 42 U.S.C. § 2000e(b).

4. Defendant Prince George's County Department of Social Service is a person within the meaning of 42 U.S.C. § 2000e(a) and an employer within the meaning of 42 U.S.C. § 2000e(b).

III. FACTS CENTRAL TO PLAINTIFF'S CLAIMS

5. On or about August 29, 2007, Plaintiff was hired by the Department of Social Services as a Family Support Worker II.

6. At the time she was hired, Plaintiff was 58 years old.

7. Plaintiff was trained as a Practical Nurse. At the time she was hired by the Department of Social Services, she had over 15 years' experience of social services support. Plaintiff also speaks Spanish.

8. The job description of the Family Support Worker II position requires, among other things, that Plaintiff perform housekeeping duties and support clients by performing tasks such as transferring them from their bed to wheelchair.

9. In performing these duties, the job specifically requires "lifting 50 pounds or more, climbing ladders," and lifting patients. Most of Plaintiff's tasks involved doing housework for patients, bathing them, turning them over, and other physical work in furtherance of her duties.

10. On or about November 1, 2010, Plaintiff sustained an on the job injury to one of

her ankles. Because of the severity of the damage, Plaintiff wore a post-operation boot. Plaintiff's injury is permanent.

11. Accordingly, Plaintiff requested that the employer temporarily place her on light duty or allow her time-off in order to recuperate from the surgery. She spoke with Deon Carter in Human Resources and her then direct supervisor, Gregory Taylor.

12. Despite the medical evidence provided, the employer refused both requests and continued to assign Plaintiff to perform the full duties of her position.

13. Plaintiff was in a lot of pain, which made it difficult for her to do her job. As alluded to above, Plaintiff's work involved a lot of physical labor such as stooping, bending, carrying, prolonged standing, and walking. These actions became much more difficult since she did not have full use of one of her ankles.

14. Consequently, on or before November 15, 2010, while cleaning a patient's toilet, Plaintiff injured herself again – this time slipping on a rug and hurting her back as well as reinjuring her ankle.

15. Plaintiff had to walk around with a cane to support her right ankle and back. To date, Plaintiff continues to use a cane to get around.

16. Plaintiff continued working full-time because the employer had previously denied her request for temporary light duty and/or time off so that she can fully heal from her injuries.

17. As a result of these exacerbated injuries, Plaintiff's physician recommended that she be placed on "light duty" from January 13, 2011, to March 14, 2012.

18. On or about January 18, 2011, in order to recuperate and comply with her physician's "light duty" order, Plaintiff made a request to Mr. Carter and Mr. Taylor for an accommodation in the form of leave and reassignment to a position that was less physically demanding.

19. The light duty order required Plaintiff to avoid bending, stooping, heavy lifting, prolonged standing, or walking.

20. On or about February 9, 2011, despite her physician's order and Plaintiff's request for accommodation of her injuries, the Department of Social Services refused her request. They required Plaintiff to perform job duties although she relied on a cane to get around.

21. In addition to refusing to accommodate Plaintiff, Mr. Taylor discriminated against Plaintiff and subjected her to ridicule by stating, "you are unfit for duty with that cane! That cane just gets in the way!" Mr. Taylor would make similar statements to Plaintiff at various points during her employment with the Department of Social Services.

22. This was not the first time Mr. Gregory had been abusive towards Plaintiff. In or about October 2007, during a meeting, Mr. Taylor assaulted Plaintiff by hitting her with a chair, which resulted in a contusion to her right arm. Plaintiff had to receive treatment at a hospital for the injury.

23. In or around November 2007, Plaintiff reported Mr. Taylor's act of aggression towards her to Mr. Carter and Mark Riley in Risk Management. However, the employer never disciplined Mr. Taylor.

24. In addition, in summer 2009, during a work picnic, Mr. Taylor made unwelcomed sexual remarks towards Plaintiff. Throughout the course of her employment thereafter, Mr. Taylor would tell Plaintiff that she "smelled like [she] just got done having sex."

25. Plaintiff filed complaints to her union and Mr. Carter. However, no disciplinary action was ever taken against Mr. Taylor.

26. In response to her most recent accommodation denial, in or around February 9, 2011, Plaintiff requested another reassignment to a sedentary position.

27. In particular, she inquired about the front desk position and the Lead Family Support Worker position, a supervisory position.

28. On or about March 14, 2011, Mr. Taylor advised Plaintiff that no such positions were available. Plaintiff also asked Mr. Carter, but he also stated that no sedentary positions were open or available. No one gave Plaintiff any other possible reassignment options.

29. From 2011 to 2012, during the period when Plaintiff repeatedly requested a reasonable accommodation, upon information and belief, numerous front desk personnel were either hired or transferred in from other departments.

30. As an experienced employee, Plaintiff was qualified for these positions. Notwithstanding, the employer in no way engaged her in an interactive process to accommodate Plaintiff's request for leave or reassignment.

31. From February 2011 through May 2011, Plaintiff continued to work full time and conducted her normal job duties while in severe pain from her injuries. Plaintiff found it very difficult to do her job in her condition.

32. The employer was aware of how much pain Plaintiff was in but failed to provide adequate reasonable accommodations such as a lighter work load, more frequent breaks, reassignment to a less physically demanding position, or adequate time off to care for herself.

33. In May 2011, as a result of her workers' compensation complaint, Plaintiff was able to take leave from May 25, 2011, to August 31, 2011.

34. In or about May 2011, Mr. Taylor gave Plaintiff an unjust performance evaluation for 2010. Plaintiff was shocked at the performance evaluation she received because at no point during the rating period did Mr. Taylor offer to help her better perform her duties in

light of her disability. Moreover, the employer made it difficult for Plaintiff to use leave to take enough time off to recuperate.

35. Plaintiff made it known to Mr. Taylor that she believed the unfair performance evaluation violated her Title VII rights. Plaintiff believed that Mr. Taylor gave her the trumped up performance evaluation in retaliation for her continued requests for reasonable accommodations.

36. On or about September 22, 2011, Plaintiff filed a grievance against the employer because it had misappropriated her leave time by using her accrued leave for her time out in the summer of 2011, rather than the accident leave under workers' compensation. This constituted protected activity because Plaintiff was seeking leave as a form of reasonable accommodation.

37. The Department of Social Services admitted that it first denied Plaintiff's request for leave and it was finally granted only after her workers' compensation complaint was successful.

38. Even then, Plaintiff was retaliated against by the employer when it deducted hours from her regular accrued leave as opposed to the accident leave.

39. In or about February 2012, Plaintiff became aware that the Lead Family Support Worker position had been available in late 2011.

40. Upon information and belief, the duties of this position consisted of assigning jobs to Support Workers, scheduling, and at times visiting clients. This position does not require bending, lifting, or stooping, or any other physical labor.

41. Although the position was open, the position was not posted internally or externally. The position was instead given to Shannon Harris, Plaintiff's 24 year old co-worker, who was hired approximately 6 months after Plaintiff. Upon information and belief, Ms. Harris does not have any known disabilities.

42. The Department of Social Services neither listed Plaintiff's name as a candidate nor considered her for the position.

43. The employer was aware that Plaintiff had requested reassignment to a sedentary position since at least November 2010.

44. Further, Plaintiff was more qualified than Ms. Harris for the Lead Family Support Worker position. Plaintiff has a diploma in Practical Nursing, while upon information and belief, Ms. Harris does not have any degree. Plaintiff had more than 15 years of social services support experience. Further, Plaintiff spent more time as a Support Worker and had seniority over Ms. Harris at the employer.

45. Upon learning about Ms. Harris' selection to the Lead Family Support Worker position, Plaintiff complained to Mr. Taylor that the employer again failed to accommodate her.

46. Mr. Taylor stated to Plaintiff in a threatening manner that he was tired of her complaints and that he could "get rid" of her. Mr. Taylor had made similar threats to Plaintiff in the past and has stated in meetings that he has gotten rid of other employees before.

47. Soon thereafter, on March 16, 2012, Plaintiff received a letter from the employer discharging her.

48. In the termination letter, the Director of the Department of Social Services, Gloria Brown, explained that as a result of Plaintiff's disability, it has become necessary to consider freeing [her] position."

49. Plaintiff was given the option of resigning and choosing "regular Retirement or Disability Retirement." Plaintiff, however, wished to continue working and asked again for a reassignment to a sedentary position. The employer again refused.

50. During the weeks following the March 16 letter from Director Brown, Mr. Taylor

explained to Plaintiff that if she did not "resign," the Department of Social Services would terminate her.

51. On May 11, 2012, Plaintiff was presented with resignation papers and was forced to quit her employment with the employer because it had failed to accommodate her.

52. Plaintiff has been unemployed since she was forced to resign.

53. As a result of the Department of Social Services' actions, Plaintiff has suffered loss of income, emotional distress, and pecuniary damages.

IV. STATEMENT OF CLAIMS

Count I: Disability Discrimination (ADA)

54. Plaintiff adopts and incorporates by reference ¶¶ 1-53 above.

55. At all relevant times -- namely from November 1, 2010, through May 2012, by virtue of the injuries she sustained while working for the employer, Plaintiff has had a "disability within the meaning of the ADA, as amended, 42 U.S.C. § 12102.

56. The Americans with Disabilities Act as Amended (ADAAA) requires that if an employee is qualified, an employer must provide an employee with reassignment to a vacant position, unless it can demonstrate undue hardship. The employee need not be the "best qualified" individual.

57. In this instance, the Department of Social Services had vacant front desk positions which were not offered to Plaintiff nor was she aware of their availability.

58. The employer maintains that although there were no "light duty" positions, it accommodated Plaintiff. Yet, the employer has failed to delineate in what manner Plaintiff was accommodated or placed on "light duty."

59. Further, when the Lead Support Worker position became available, the employer

assumed Plaintiff was "unqualified" without considering her. Instead, it assigned the position to Ms. Harris, who is not an individual with a qualified disability and does not have as much relevant experience.

60. The employer also did not demonstrate how it determined that Plaintiff was unqualified for the position or why it did not give her an opportunity to compete for the position.

61. Similarly, permitting the use of leave is a form of reasonable accommodation. Under the ADAAA, employees may seek leave as a form of accommodation and it is well established that the source of leave may come from workers' compensation or accrued annual leave.

62. In this case, Plaintiff had been exemplary in her attendance – she had accrued several sick leave hours, which she sought to use after her injury. However, the employer denied her such leave. Then, in May 2011, the employer permitted Plaintiff to take leave as a result of her workers' compensation claim. To date, the Department of Social Services refused to compensate Plaintiff for her unused accrued leave.

63. At minimum, the ADA requires that the employer must engage in the interactive process with the employee to attempt reasonable accommodation, absent undue hardship. The Department of Social Services has clearly failed to engage in this process. It is also clear that the employer denied Plaintiff leave and equal opportunity to compete for the Lead Support Worker position.

64. By so discriminating against Plaintiff on the basis of her disabilities, Defendant maliciously violated the ADA, 42 U.S.C. § 12112.

65. As a result of the employer's violations of the ADA, Plaintiff has suffered and is suffering injuries, including loss of past, present, and future earnings and considerable mental distress.

Count II: Age Discrimination (ADEA)

66. Plaintiff adopts and incorporates by reference ¶¶ 1-65 above.

67. At all relevant times -- namely from November 1, 2010, through May 2012, Plaintiff was over 40 years of age.

68. The Department of Social Services discriminated against Plaintiff based on her age in violation of ADEA § 623(a) by not giving her an opportunity to compete for the Lead support Worker position when it became available. Instead, the employer selected Ms. Harris, who is younger than Plaintiff and not as qualified for the position.

69. The employer has not presented a legitimate non-discriminatory reason for the personnel decision, including how it determined that Plaintiff was unqualified for the position or why it did not give her an opportunity to compete for the position.

70. As a result of Defendant's violations of the ADEA, Plaintiff has suffered and is suffering injuries, including loss of past, present, and future earnings and considerable mental distress.

Count III: Retaliation (ADA & ADEA)

71. Plaintiff adopts and incorporates by reference ¶¶ 1-70 above.

72. As stated above, Plaintiff is a qualified individual with a disability and is over 40 years of age.

73. The employer retaliated against Plaintiff when she complained about the lack of reasonable accommodations and reassignments to vacant positions from November 2010 through May 2012.

74. Specifically, the Department of Social Services denied her the use of accrued sick

leave, not engaging in the interactive process to accommodate Plaintiff's disability, giving her an unjust performance evaluation, and ultimately terminating her by "freeing" her position and forcing her to elect "regular retirement or disability retirement."

75. As a result of Defendant's violations of the ADA and ADEA retaliation clauses, Plaintiff has suffered and is suffering injuries, including loss of past, present, and future earnings and considerable mental distress.

IV. REMEDIES SOUGHT

76. WHEREFORE, Plaintiff respectfully requests that the Court issue a judgment granting her the following relief from Defendant:

a. A declaratory judgment that defendant discriminated against Plaintiff, as alleged herein;

b. Back pay, including without limitation other lost benefits due to Defendant's discrimination against Plaintiff;

c. Compensatory and punitive damages, pursuant to the ADA and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §§ 1981a(a)(2), 1981a(b)(3)(A), for taking these actions with malice and bad faith;

d. Prejudgment and post judgment interest on all damages, on the lost compensation and compensatory damages;

e. Reasonable attorneys' fees and costs under 42 U.S.C. §§ 1981a, 2000e-5(k); and

f. Such other and further relief as to the Court seems just and warranted.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

77. On November 26, 2011, Plaintiff filed a formal Charge of Discrimination with the

EEOC, although she had long contacted the Commission to report the employer's age and disability discrimination, refusal to accommodate her, and retaliation.

78. The EEOC accepted Plaintiff's formal Charge of Discrimination as timely.

79. The Department of Social Services was duly notified about Plaintiff's administrative complaints and was given an opportunity to respond to her allegations.

80. On July 12, 2013, the EEOC made a decision on the merits of Plaintiff's discrimination claims and issued her a Notice of Right to Sue, by regular mail.

81. On September 10, 2013, Complainant had met her original 90 day deadline to file a complaint with this court after she received the Notice of Right to Sue on her EEOC complaint.

82. After her original complaint was accepted by this court, Docket No. PJM-2633, Plaintiff was given a deadline of November 22, 2013, to serve summons by U.S. Marshall pursuant to an Order granted by Judge Peter Messitte in response to Plaintiff's granted motion to proceed in forma pauperis.

83. Plaintiff failed to meet her deadline to serve summons, therefore, on November 26, 2013, her complaint was dismissed without prejudice.

84. Plaintiff has therefore exhausted all available administrative remedies which may be conditions precedent to bringing this action.

85. Further, pursuant to Federal Rule of Civil Procedure 41(b), Plaintiff is re-submitting her complaint for filing.

VI. JURY TRIAL DEMAND

86. Plaintiff requests a jury trial on all issues of fact and damages arising herein.

VERIFICATION

I hereby certify under penalty of perjury that I am the Plaintiff in the above-captioned case; that I have read the foregoing Verified Complaint; and that the facts related herein are true and correct to the best of my knowledge, information, and belief.

Executed at Fort Washington, Maryland, this 24th day of March, 2014.

SENORA ATAKULU

Respectfully submitted,

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